

Message Text

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ACTION COME-00

INFO OCT-01 EUR-12 IO-13 ISO-00 AID-05 CIAE-00 EB-07

FRB-03 INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02

OPIC-03 SP-02 LAB-04 EPG-02 SIL-01 OMB-01 NSC-05

SS-15 STR-04 CEA-01 ITC-01 AGRE-00 L-03 H-01

/099 W

-----051936Z 020182 /40

R 051745Z MAY 77

FM AMEMBASSY PARIS

TO SECSTATE WASHDC 2507

INFO USMISSION EC BRUSSELS

USDEL MTN GENEVA

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COMMERCE FOR FIELD OIM/BIC AND DAUMAN BIEPR/OITP/IND

E. O. 11652:N/A

TAGS: ETRD, EGEN, FR

SUBJECT: FRENCH LABELLING LAW

REF: A. STATE 081733 B. EC BRUSSELS 03814

C. PARIS 05751 D. PARIS A-166 OF MAY 5, 1977

1. RAPPORTEUR OF HIGH COMMITTEE FOR FRENCH LANGUAGE,
MICHEL BRUGVIERE, PROVIDED FOLLOWING COMMENTS TO
POINTS RAISED IN PARA 2 OF REFTEL A:

A. EARLIER DRAFTS OF IMPLEMENTING CIRCULAR
LETTER ON FRENCH LABELLING LAW CONTAINED A PASSAGE
EXCLUDING CAPITAL GOODS FROM COVERAGE. HOWEVER, THIS
EXCLUSION WAS DROPPED FROM FINAL TEXT BECAUSE:

(1) IT MIGHT RAISE MORE QUESTIONS
THAN IT WOULD ANSWER AND CLOG
TRIBUNALS WITH CASES OF DEFINITION,

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E.G. IS A TYPEWRITER OR COPYING MACHINE
USED IN AN OFFICE A CAPITAL OR CONSUMER
GOOD; AND

(2) THE LABELLING LAW ITSELF MAKES NO
SUCH DISTINCTION AND THE GOF MIGHT WELL
BE EXCEEDING ITS AUTHORITY IF IT WERE

TO EXCLUDE CAPITAL GOODS FROM APPLICATION
OF LAW.

BRUGUIERE REITERATED HIS EARLIER COMMENTS, TOIT, THE
LAW IS AIMED AT PROTECTING THE CONSUMER AND WHILE NO
EXPLICIT INSTRUCTIONS HAD BEEN GIVEN TO ENFORCEMENT
AGENCY TO IGNORE CAPITAL EQUIPMENT GOODS, IT WAS
HIGHLY UNLIKELY THAT THESE GOODS WOULD BE AFFECTED.
NEVERTHELESS, THERE ARE STILL GRAY AREAS AS FOLLOWING
CASE ILLUSTRATES.

B. TO OBTAIN FURTHER CLARIFICATION, EMBOFF
SHOWED BRUGUIERE LETTER FROM DITCH WITCH INTERNATIONAL
WHICH EXPORTS SERVICE LINE TRENCHERS TO FRANCE. COMPANY
ASKED WHETHER "FOR EXAMPLE, DECALS ON MACHINES INDICA-
TING METHOD OF OPERATION, PARTS BOOKS, OPERATIONAL
MANUALS, ETC ..." WILL BE AFFECTED. BRUGUIERE'S IN-
TERPRETATION WAS THAT PARTS BOOKS AND OPERATIONAL
MANUALS WOULD NOT, BUT THAT DECALS MIGHT IF LACK
OF FRENCH TRANSLATION POSED HAZARD TO WORKERS'
SAFETY. IF, FOR EXAMPLE, AN EMPLOYEE WERE INJURED
WHILE USING THE MACHINE, HE MIGHT BRING ACTION AGAINST
EMPLOYER AND IMPORTER ON GROUNDS THAT DECALS INDICA-
TING METHOD OF OPERATION WERE NOT IN FRENCH AS
REQUIRED BY LABELLING LAW.

C. REGARDING RESPONSIBILITY FOR PRODUCT
LIABILITY AND/OR WARRANTIES ESPECIALLY IF TRANSLA-
TION IS DONE BY SOMEONE OTHER THAN THE MANUFACTURE,
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BRUGUIERE REFERRED TO TEXT OF CIRCULAR LETTER WHICH
STATES THAT: "... THE IMPORTER WHO RESELLS (REVENDEUR)
IN FRANCE IS RESPONSIBLE FOR COMPLYING WITH THE RE-
QUIREMENTS OF THE LAW. THIS IS ALSO THE CASE FOR
A FOREIGN EXPORTER WHO MAKES A DIRECT SALE ON THE
FRENCH MARKET." THUS THE IMPORTER IS RESPONSIBLE IF HE
IMPORTS ON HIS OWN ACCOUNT FOR RESALE AND THE
EXPORTER IS RESPONSIBLE IF HE SELLS DIRECTLY TO FRENCH
END-USER. HOWEVER, EXPRESSLY EXCLUDED FROM THE LAW'S
REQUIREMENTS ARE OPERATIONS BETWEEN FOREIGN EXPORTER
AND FRENCH IMPORTER, LATTER BEING UNDERSTOOD AS NOT

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END-USER OF PRODUCT BUT ONLY MIDDLEMAN.

D. GOF HAS NO PLANS TO ESTABLISH PROCEDURES
TO PROVIDE IMPORTERS WITH OFFICIAL ADVICE ON GROUNDS
THAT THIS WOULD BE TOO COMPLICATED. CLARIFICATION
WILL COME EX POST ON AD HOC BASIS VIA TRIBUNAL
DECISIONS.

2. IMPORTERS ASSOCIATION DIRECTOR SAID HIS GROUP
PLANS TO BRING MATTER TO CONSEIL D'ETAT'S ATTENTION
BEFORE MAY 19. DIRECTOR INDICATED THAT THEY EXPECT
THEIR COMPLAINT WILL BE REJECTED BECAUSE CONSEIL
LACKS COMPETENCE TO RULE ON "CONSTITUTIONALITY" OF
CIRCULAR SINCE CIRCUIAR IS NOT A LAW BUT ONLY AN
INTERPRETATION THEREOF. HOWEVER, BY SEIZING CONSEIL
OF ISSUE, ASSOCIATION HOPES TO BRING PRESSURE ON
GOF TO WITHDRAW CIRCULAR AND TO SET LEGAL BASIS
FOR DEFENSE OF IMPORTERS WHO RUN AFOUL OF CIRCULAR
LETTER'S INTERPRETATION OF LAW'S APPLICATION.
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ASSOCIATION DIRECTOR ADDED THAT IT STILL REMAINS TO BE
SEEN HOW LAW WILL BE APPLIED.

3. WE SOUNDED OUT EMBASSIES OF U.K., WEST GERMANY
AND DENMARK TO ASCERTAIN WHAT ACTIONS THEY HAD TAKEN

ON THIS MATTER. ALL HAD AT SOME TIME DISCUSSED LABELLING LAW WITH HIGH COMMITTEE REPRESENTATIVES, BUT NONE HAD BEEN INSTRUCTED RECENTLY TO MAKE REPRESENTATION TO GOF REGARDING IMPACT OF LAW. ALL SAID THEY HAD RECEIVED FEW COMPLAINTS FROM THEIR EXPORTERS AND WERE FOR THE MOST PART IN A WAIT-AND-SEE POSITION.

4. WE ARE FORWARDING TO COMMERCE UNDER COVER OF REFAIR TEXTS REQUESTED AS WELL AS COPY OF SPEECH RE LABELLING LAW WHICH BRUGUIERE GAVE IN LONDON TO CONFEDERATION OF BRITISH INDUSTRIES.

5. COMMENT. WE BELIEVE FURTHER CLARIFICATION OF LAW'S IMPACT ON US EXPORTS MUST AWAIT CASE-BY-CASE DETERMINATION BY TRIBUNALS. WHILE WE OBVIOUSLY CANNOT COUNSEL US EXPORTERS TO IGNORE LAW, WE CAN AT LEAST SAY THAT IT IS OUR UNDERSTANDING THAT CAPITAL EQUIPMENT GOODS ARE UNLIKELY TO BE SUBJECT TO LAW'S APPLICATION, EXCEPT WHERE LACK OF TRANSLATION OF OPERATING INSTRUCTIONS ON MACHINES OR WARNING NOTICES IS LIKELY TO POSE SAFETY HAZARD. ON THE OTHER HAND, CONSUMER GOODS ARE SUBJECT TO THE LAW AND US EXPORTERS AND THEIR FRENCH IMPORTERS WILL HAVE TO WORK OUT APPROPRIATE COMPLIANCE ARRANGEMENTS. IN ANY EVENT, TO DATE WE HAVE NOT HEARD OF ANY INSTANCE WHERE RETAILERS OF US PRODUCTS HAVE BEEN FINED FOR NON-COMPLIANCE WITH LAW. HOWEVER, THIS MAY WELL CHANGE AS STOCKS IMPORTED BEFORE FEBRUARY 1, 1977 ARE DEPLETED.

ONE FINAL NOTE. GOF IS INDEED SERIOUS ABOUT LIMITED OFFICIAL USE

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CONSUMER PROTECTION AND HAS JUST SUBMITTED FOR COUNCIL OF MINISTERS' APPROVAL A WIDE-RANGING DRAFT LAW AIMED AT SIGNIFICANTLY STRENGTHENING AND ENLARGING PRESENT CONSUMER PROTECTION LEGISLATION. WE SHALL REPORT FURTHER ON ELEMENTS OF PROPOSED LAW WHICH MAY EFFECT U.S. EXPORTS.
GAMMON

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